

Falls Church, Virginia 22041

File: (b) (6) – Kansas City, MO

Date: **FEB 23 2018**

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew L. Hoppock, Esquire

ON BEHALF OF DHS: Jennifer A. May
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of El Salvador, appeals from the Immigration Judge's decision dated April 26, 2017, which denied his application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3) (2012), and protection under the Convention Against Torture, 8 C.F.R. § 1208.16(c) (2017). The parties have provided arguments on appeal. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We agree with the Immigration Judge that the respondent, though credible, has not met his burden of proof for asylum (IJ at 4, 7-10). The respondent seeks relief based on membership in a particular social group and/or political opinion (Respondent's Prehearing Br. 15, 21). The respondent articulated a proposed social group of Salvadoran males between the ages of 15 and 29.¹ Respondent's Br. at 16-17; Respondent's Prehearing Br. at 15. We agree with the Immigration Judge that the respondent has not shown that the proposed group is socially distinct. On appeal, the respondent argues that the Immigration Judge did not consider the evidence submitted that shows that the (b) (6) gang targets this group because of their age and sex.² Respondent's Br. at 15-16. However, the dispositive inquiry is not whether gangs view or treat the group differently; rather, the respondent must present evidence showing that the relevant society in El Salvador perceives the proposed group as distinct in some significant way. *Ngugi v. Lynch*, 826 F.3d 1132, 1138 (8th Cir. 2016); *Matter of M-E-V-G-*, 26 I&N Dec. 227, 244 (BIA 2014). The respondent does not identify any such evidence of record on appeal.

¹ We acknowledge that the Immigration Judge defined the group differently (IJ at 7, 8).

² The Immigration Judge indicated that all evidence was considered, whether it was specifically discussed or not (IJ at 4).

With respect to political opinion, we agree that the respondent has not shown a nexus between any past or feared future harm and his actual political opinion or any political opinion imputed to him. On appeal, the respondent argues that recent evidence shows that the (b) (6) gang is politically motivated. Respondent's Br. at 18-20. However, this evidence is not sufficient to demonstrate that any past harm the respondent experienced or future harm the respondent may experience was or will be on account of his real or imputed political opinion. The respondent indicated that the gang members wanted him to join them to help them sell drugs and gain territory and that he refused (IJ at 5; Tr. at 39; Exh. 3 at 5). He does not claim he articulated a political opinion for his refusal, and he has not presented evidence that establishes that gang members were motivated to harm him based on a political opinion they imputed to him. *Ngugi v. Lynch*, 826 F.3d at 1137.

Inasmuch as the respondent has not met his burden of showing past persecution or a well-founded fear of persecution as required for asylum, it follows that he has also failed to satisfy the higher standard of a clear probability of persecution as required for withholding of removal. See *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *INS v. Stevic*, 467 U.S. 407 (1984).

The Immigration Judge also found that the respondent has not established eligibility for protection under the CAT (IJ at 11). 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). The respondent does not challenge this determination on appeal. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.



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